

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LEANDER J. GREGG,

Plaintiff,

OPINION AND ORDER

21-cv-301-bbc

v.

OFFICER NICHOLAS KERNS,

Defendant.

In a previous lawsuit, plaintiff LeAnder J. Gregg alleged that a nurse at the Eau Claire County jail gave him medication belonging to another inmate and that Officer Nicholas Kerns refused to provide plaintiff medical treatment after he suffered adverse effects. That lawsuit was dismissed on June 4, 2020, because plaintiff had not exhausted his administrative remedies before filing the lawsuit. Dkt. #60, in 19-cv-133-bbc. The Court of Appeals for the Seventh Circuit affirmed the dismissal for failure to exhaust. Gregg v. Correct Care Solutions, LLC, 844 F. App'x 913 (7th Cir. 2021).

Plaintiff then refiled his case, alleging that he had fully exhausted his administrative remedies since the previous dismissal. However, because the record from plaintiff's previous case had showed that the jail rejected plaintiff's late grievances and appeals, I concluded that plaintiff could not proceed further with this lawsuit until he submitted evidence showing that he exhausted his administrative remedies through the Eau Claire County jail. Plaintiff has now responded, submitting documents showing that he attempted to exhaust his administrative remedies in July and August 2020, but that the grievances were rejected as

untimely. Dkt. #9-1. Unfortunately for plaintiff, these documents do not show that he exhausted his administrative remedies—they show the opposite. To exhaust remedies under 28 U.S.C. § 1997(e), “a prisoner must file complaints and appeals in the place, and at the time, the prison’s administrative rules require.” Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002). Plaintiff’s grievances and appeals were rejected as untimely under the jail’s grievance procedures, so plaintiff cannot proceed with his case in federal court.

ORDER

IT IS ORDERED that this case is DISMISSED for plaintiff LeAnder J. Gregg’s failure to exhaust his administrative remedies.

Entered this 7th day of September, 2021.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge